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In the Supreme Court of the United States

OCTOBER TERM, 1981

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL., PETITIONERS

v.

ALLIED INTERNATIONAL, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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INTEREST OF THE UNITED STATES

This case involves the application of the prohibition on secondary boycotts in Section 8(b)(4)(B) of the National Labor Relations Act (NLRA), 29 U.S.C. 158(b)(4)(B), to work stoppages called by the International Longshoremen's Association (ILA) as a protest against the invasion of Afghanistan by the Union of Soviet Socialist Republics (USSR). The National Labor Relations Board (the Board), which is responsible for administering the provisions of the NLRA, recently issued a decision in a related case involving these same parties, in which it found, as did the court of appeals in this case, that the conduct at issue violated Section 8(b)(4)(B) of the NLRA. *International Longshoremen's Association, AFL-CIO (Allied International, Inc.)*, 257 N.L.R.B. No. 151 (Aug. 28, 1981).[1] See also Brief

[1] A copy of that decision is appended to the Supplemental Memorandum for the United States as Amicus Curiae, hereafter referred to as "S.M."

There are currently pending before the Board two additional cases involving issues essentially the same as those presented in

for the United States as Amicus Curiae, No. 80-1045, at 1-2 (describing pertinent interests of the Departments of State and Agriculture).

STATEMENT

Allied International, Inc. (Allied), a Massachusetts corporation, imports wood products from the USSR pursuant to a contract with a USSR government agency. Allied contracted with Waterman Steamship Corp. (Waterman), a steamship line operating ships of United States registry, for the shipment of these wood products from the USSR to ports on the East and Gulf coasts of the United States. At Boston, Waterman employed John T. Clark & Son of Boston, Inc. (Clark), a stevedoring company, to unload its ships. Clark regularly obtains all of its longshore employees from a hiring hall maintained by petitioner ILA Local 799 (Local 799) pursuant to a collective bargaining agreement between Local 799 and the Boston Shipping Association, of which Clark is a member. (Pet. App. 2a; J.A. 24a, 29a, 31a, 33a-35a, 45a.)

On January 9, 1980, ILA President Gleason issued a statement protesting the USSR's invasion of Afghanistan and ordering all ILA members employed in ports on the East and Gulf coasts to cease handling all cargo destined to, or arriving from, the USSR (Pet. App. 3a; J.A. 35a, 60a).[2] On that date, Waterman's ship, the WAL-

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this case. *International Longshoremen's Association (Occidental Chemical Co.)*, Case Nos. 10-CC-1141-1 *et al.*, JD 98-81 (Mar. 16, 1981), and *International Longshoremen's Association (Kansas Farm Bureau)*, Case Nos. 23-CC-764-1, *et al.*, JD 99-81 (Mar. 16, 1981).

[2] The directive stated (Pet. App. 3a n.2; J.A. 10a-11a, 60a):

> In response to overwhelming demands by the rank and file members of the Union, the leadership of ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.
>
> This order is effective across the board on all vessels and all cargoes. Grain and other foods as well as high valued general

TON, arrived at Boston bearing a shipment of wood products that Allied had purchased from the USSR, and began discharging a portion of its cargo there prior to transporting the remainder to other East and Gulf coast ports. Upon learning of ILA President Gleason's boycott announcement that day, Allied's President Gildea telephoned Gleason, explained the situation, and asked Gleason whether the WALTON would be able to deliver the remainder of Allied's cargo to the other scheduled ports. Gleason responded that he had to "draw the line" somewhere and, consistent with his announcement, stated that the ship could discharge USSR cargo only at Boston, the port in which it was located when his order was issued (Pet. App. 3a; J.A. 35a-36a.)

When Waterman was informed that longshoremen employed at the WALTON's remaining ports of call would not handle cargo from the USSR, it cancelled the WALTON's voyage to those ports and had the entire cargo discharged at Boston. Waterman also substantially reduced the amount of Allied's wood products being loaded onto the MIDDLETON at a USSR port and rerouted that vessel from Boston and Gulf coast ports to Montreal, Canada. Thereafter, Waterman cancelled its agreement to transport Allied's cargo from the USSR and

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freight. However, any Russian ship now in process of loading or discharging at a waterfront will be worked until completion.

The reason for this action should be apparent in light of international events that have affected relations between the U.S. and the Soviet Union.

However, the decision by the Union leadership was made necessary by the demands of the workers.

It is their will to refuse to work Russian vessels and Russian cargoes under present conditions in the world.

People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs.

refused to load Allied's wood onto the JEFFERSON at a USSR port. (Pet. App. 3a; J.A. 35a-38a, 41a-44a.)[3]

In response to inquiries by Allied officials, on March 12 and 25, 1980, representatives of ILA and Local 799 affirmed that longshoremen at Boston would not unload any cargo originating in the USSR so long as ILA President Gleason's directive remained effective (J.A. 39a-40a, 46a-47a). Allied filed charges with the Board alleging that the ILA's boycott violated Section 8(b)(4)(B) of the NLRA, 29 U.S.C. 158(b)(4)(B), and brought the instant suit in the United States District Court for the District of Massachusetts seeking, *inter alia*, damages under Section 303 of the Labor-Management Relations Act, 1947 (LMRA), 29 U.S.C. 187, for the same activity. The instant suit was consolidated with *Walsh* v. *International Longshoremen's Association*,[4] in which the Board's Regional Director sought a preliminary injunction against the boycott pursuant to Section 10(*l*) of the NLRA, 29 U.S.C. 160(*l*).

In *Walsh*, the district court denied the Regional Director's request for a preliminary injunction. It found that, since "the controversy concerns the actual passage of goods from the U.S.S.R. to a consignee in the United States," the boycott activity was "in commerce" within the meaning of the NLRA. 488 F. Supp. 524, 528 (D. Mass. 1980). However, the court concluded that Section 8(b)(4)(B) of the NLRA does not apply "where a purely political dispute has provided the basis of a secondary boycott," and does not "prohibit the exercise of political protest by a union and its members." 488 F. Supp. at 530. The court further concluded that, even assuming that Section 8(b)(4)(B) did apply to political disputes, the ILA "has not induced a strike against

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[3] Because of the ILA's boycott, Allied ultimately renegotiated its contract with the USSR so as to reduce substantially the amount of wood products purchased from that country (J.A. 26a-27a, 40a).

[4] 488 F. Supp. 524 (D. Mass.), vacated and remanded with instructions to dismiss on res judicata grounds, 630 F.2d 864 (1st Cir. 1980).

Allied, Waterman, or Clark; nor does it seek to pressure those employers not to deal with one another." 488 F. Supp. at 530. Rather, "[u]nion members have simply declined to accept employment on certain ships, as a form of political protest." *Id.* at 530-531. This, the court concluded, "is a primary boycott of Russian goods, with [only] incidental effects upon those employers who deal in such goods." *Id.* at 531.

Applying its holding in *Walsh* as the "law of the case" in the instant suit, the district court dismissed the secondary boycott allegations of the complaint for failure to state a claim. *Allied International, Inc.* v. *International Longshoremen's Association*, 492 F. Supp. 334, 336 (D. Mass. 1980).[5] Allied appealed and the court of appeals, finding that the district court's dismissal of the secondary boycott allegations was erroneous, vacated that dismissal and remanded the case for further consideration. Pet. App. 1a-37a; 640 F.2d 1368.[6]

The court of appeals concluded that, inasmuch as "[t]he *only* labor-related activity in issue has been played out by an all-American cast," the ILA's boycott was "in commerce" within the meaning of the NLRA even though it was "inspired by military events in foreign lands—events far beyond NLRB jurisdiction" (Pet. App. 13a).[7] The court also concluded that the other elements

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[5] The district court also dismissed the other portions of the complaint, which sought injunctive and monetary relief for violation of the Sherman Act, 15 U.S.C. 1, and for tortious interference with business relations. 492 492 F. Supp. at 339.

[6] The court of appeals meanwhile had affirmed the district court's denial of injunctive relief in *Walsh* without reaching the merits, for it gave res judicata effect to the denial of the request of another Regional Director of the NLRB for a temporary injunction against the ILA's work stoppage in Texas (see *Baldovin* v. *International Longshoremen's Association*, 626 F.2d 445 (5th Cir. 1980)). *Walsh* v. *International Longshoremen's Association*, 630 F.2d 864 (1st Cir. 1980). Because the NLRB was not a party to the instant case, that holding did not bar consideration of the merits in this case.

[7] Judge Aldrich dissented on this point (Pet. App. 29a-33a).

of a Section 8(b)(4)(B) violation were established. Thus, the court noted that "it is uncontroverted that the ILA leadership directed ILA members, * * * employees of Clark, to engage in a concerted refusal to handle a certain class of goods which Clark had contracted to service" (Pet. App. 14a). And, notwithstanding ILA's assertion that its " 'sole object is to vindicate the consciences of its members who find it repugnant to do business as usual with the aggressor and, by passive action, to protest politically the invasion of Afghanistan' " (*ibid.*), the court found that "the ILA has chosen to carry out its goal of protest through action—a selective work stoppage—which by its very nature is designed to force at least partial cessation of business between companies with which ILA has no labor-related grievances" (*ibid.*). The court also found "no reason why [Section 8(b)(4)(B)] should not prohibit such secondary pressure, for whatever reasons motivated," including pressure brought in support of "a random political objective far removed from what has traditionally been thought to be the realm of legitimate union activity" (Pet. App. 21a). Finally, the court concluded that the ILA's "resort[] to coercive tactics against neutral parties * * * exceeded the bounds of 'political expression' in its pure form" and therefore its activity was not protected by the First Amendment (Pet. App. 23a-24a).

SUMMARY OF ARGUMENT

I

In furtherance of a political dispute with the USSR, petitioners (the ILA and its agents) induced employees of an American stevedoring company (Clark) to refuse to unload wood products that Allied had purchased from the USSR and that were being transported on an American ship owned by Waterman—thereby causing a disruption of business relations among these American companies. Although "it might appear too plain for discussion that the ILA's refusal to unload Allied's goods affects both commerce and a person engaged in commerce" (Pet. App. 6a), within the meaning of Section

2(6) of the NLRA, 29 U.S.C. 152(6), petitioners contend that their activity nonetheless falls outside the jurisdictional reach of the NLRA under a series of cases involving foreign-flag ships in which this Court has limited the terms "in commerce" as used in that Act. This contention misconceives the basis for those decisions.

Those decisions turn on the nature and thrust of the union activity involved, and not, as petitioners assert, on the circumstance that the Board lacked jurisdiction over the union's primary dispute. Thus, in *Windward Shipping (London) Ltd.* v. *American Radio Association*, 415 U.S. 104 (1974), and *American Radio Association* v. *Mobile Steamship Association*, 419 U.S. 215 (1974), the union activity consisted of primary picketing directed at the employment conditions of foreign seamen on foreign ships, conduct which the Court had previously held to be not "in commerce" within the meaning of the NLRA, and thus outside the Board's jurisdiction. Although the same picketing affected domestic employers, this effect was merely an incident of the ship picketing that was beyond the Board's reach. Here, by contrast, the union engaged in purely secondary activity against domestic employers subject to the Board's jurisdiction. Since this is the only activity involved, there is no need, as there was in *Windward/Mobile*, to separate the domestic secondary effects from activity over which the Board lacked jurisdiction. The Board can thus assert jurisdiction without interfering in foreign maritime operations or ignoring principles of comity.

II

The Board and the court below correctly found that the inevitable consequences of the ILA boycott, which petitioners had every reason to foresee, were that Russian goods would not be moved by any employees in any of the ports encompassed by the boycott, that Waterman would cease carrying Russian cargo to the boycotted ports, and that Allied would be forced to cease purchasing Russian wood for delivery to ports affected by the boycott. Under principles recently reaffirmed in

NLRB v. *Retail Store Employees Union, Local 1001 (Safeco Title Insurance Co.)*, 447 U.S. 607 (1980), the presence of the secondary object proscribed by Section 8(b)(4)(B) of the NLRA, 29 U.S.C. 158(b)(4)(B), may be inferred from this foreseeable and inevitable result of the ILA's conduct.

The Board and the court below also properly rejected petitioners' argument that their boycott was not regulated by Section 8(b)(4)(B) of the NLRA because it was not in support of a labor dispute with any primary employer and sought a political rather than an economic objective. If a boycott is "tactically calculated to satisfy union objectives elsewhere," it is secondary, and "[t]here need not be an actual dispute with the [primary] employer * * * for the activity to fall within this category * * *." *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, 644-645 (1967). Moreover, as the court below concluded (Pet. App. 21a), nothing in the "language of section 8(b)(4) and the congressional objectives that prompted its enactment point to [any] reason why the section should not prohibit * * * secondary pressure, for whatever reasons motivated," including that "motivated by a 'purely political dispute.'" To accord Section 8(b)(4)(B) this scope would not impinge on the right of expression of the union and its members. For, as the court below pointed out (Pet. App. 22a-23a), "the union and its members have numerous alternative forms of 'expression' left to them."

III

The Board and the court below properly rejected petitioners' contention that their refusal to handle Russian goods was merely an expression of the conscience of the individual union members and thus privileged by the First Amendment. The uncontradicted evidence shows that the decision to boycott Russian cargo was made by the ILA leadership and was maintained in effect as a matter of ILA policy determined at the headquarters level. Thus, the ILA did more than merely disseminate information or express the union's or the members' polit-

ical views. Rather, the union induced its members to withhold their services from their employer, and thereby coerced and restrained the employer who relied on the union for its labor supply. The regulation of such inherently coercive conduct raises no First Amendment problem.

ARGUMENT

I. THE ILA REFUSAL TO HANDLE RUSSIAN CARGO WAS ACTIVITY "IN COMMERCE" AND SUBJECT TO NLRA JURISDICTION

In furtherance of a political dispute with the USSR, petitioners engaged in conduct classically subject to regulation by the Board, under Section 8(b)(4) of the NLRA, 29 U.S.C. 158(b)(4) (see *infra*, pages 17-26).[8] This conduct involved actions by American employees working for American employers and concededly caused serious injury to neutral parties. Petitioners contend (Pet. Br. 8-11) that this activity is immune from NLRA jurisdiction under this Court's decisions limiting the Board's jurisdiction in cases where the disputed conduct involved and inescapably interfered with the internal operations of foreign entities. That contention is without merit. The exercise of Board jurisdiction over this purely domestic secondary conduct does not involve regulation of the primary dispute between the ILA and the USSR; it poses no interference with foreign maritime operations, principles of comity, or international trade; it furthers the legislative purpose in enacting Section 8(b)(4) of the NLRA; and it is consistent with this Court's teachings.

The term "commerce" is defined in Section 2(6) of the NLRA, 29 U.S.C. 152(6), to include, *inter alia*, "trade,

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[8] Since Section 303 of the LMRA, 29 U.S.C. 187, provides a cause of action for damages for any person injured in his business by reason of conduct by a labor organization that is "defined as an unfair labor practice in section 158(b)(4) of this title," Allied's right to recover in the present suit on its Section 303 count is dependent on a finding that the ILA boycott violated Section 8(b)(4)(B) of the NLRA.

traffic, commerce, transportation, or communication * * * between any foreign country and any State." As the court of appeals stated (Pet. App. 6a):

> At first blush, it might appear too plain for discussion that the ILA's refusal to unload Allied's goods affects both commerce and a person engaged in commerce. Allied, Waterman and Clark are American companies and the ILA is an American union. All engage regularly in business affecting the transportation of goods among the several states. Indeed, the instant dispute arose when the ILA's actions allegedly impeded Allied's ability to move its wood products from Boston to other ports along the East Coast, and Allied contends that the ILA continues to frustrate its ability to transport its goods into this country.

However, in a series of cases involving foreign-flag ships, this Court has limited the terms "in commerce" and "affecting commerce" as used in the NLRA.

Thus, in *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138 (1957), the Court held that the NLRA did not extend to picketing of a foreign-flag ship by American unions in support of a strike staged by foreign seamen against their foreign shipowner-employers. Finding that Congress did not intend the Act to cover "wage disputes arising on foreign vessels between nationals of other countries" (*id.* at 142), the Court concluded that the Act did not preempt a state law damage action brought by the shipowners against the unions.

Incres Steamship Co. v. *International Maritime Workers Union*, 372 U.S. 24 (1963), joined the *Benz* legislative history rationale to the Act's "affecting commerce" terminology. *Incres*, like *Benz*, considered whether the NLRA deprived a state court of jurisdiction over picketing of foreign-flag ships by American unions in support of a labor dispute between the shipowners and a foreign crew. Concluding that "maritime operations of foreign-flag ships employing alien seamen are not in 'commerce' within the meaning of [NLRA] § 2(6)" (372 U.S. at 27), the Court held that the NLRA did not protect the

picketing from operation of state law. In *McCulloch* v. *Sociedad Nacional de Marineros*, 372 U.S. 10 (1963), a companion case to *Incres*, the Court had held that the NLRB has no jurisdiction to order a representation election among the foreign crews of foreign-flag vessels.

In contrast, the Court in *International Longshoremen's Association, Local 1416* v. *Ariadne Shipping Co.*, 397 U.S. 195 (1970), held that picketing directed at foreign-flag ships to protest substandard wages paid to nonunion American longshoremen servicing those ships in American ports arguably was protected by Section 7 of the NLRA, 29 U.S.C. 157, and thus not subject to the jurisdiction of the state courts. As the Court held, *Ariadne* differed from *Benz* and *Incres* in that the protest "threatened no interference in the internal affairs of foreign-flag ships likely to lead to conflict with foreign or international law." 397 U.S. at 200.

In *Windward Shipping (London) Ltd.* v. *American Radio Association*, 415 U.S. 104 (1974), the Court again held that picketing of foreign ships to protest wages paid to foreign seamen was not activity "affecting commerce" within the meaning of the NLRA, even though American unions staged the picketing not to support the foreign crew, but to publicize the competitive advantage enjoyed by foreign ships over American shippers who employed American union members. The Court in *Windward* stated that the line of cases beginning with *Benz* did not "purport to fully delineate the threshold of interference with the maritime operations of foreign vessels which makes the [NLRA] inapplicable" (415 U.S. at 114). Because the pickets in *Windward* "[a]t the very least * * * must have hoped to exert sufficient pressure so that foreign vessels would be forced to raise their operating costs to levels comparable to American shippers," thus occasioning "more than a negligible impact on the 'maritime operations' of these foreign ships" (*ibid.*), the picketing was at root an attempt to interfere with the internal workings of a foreign vessel, the sort of activity to which the NLRA had already been held not to apply

in *Benz* and *Incres*. The state courts accordingly had jurisdiction to enjoin the picketing.

In *American Radio Association* v. *Mobile Steamship Association*, 419 U.S. 215 (1974), picketing identical to that involved in *Windward*, but at another port, had been enjoined by a state court in an action by American stevedoring companies seeking to service the foreign ships and American shippers wishing to load their cargoes on the ships. In this Court, the unions challenged the state court's jurisdiction to issue the injunction, distinguishing *Windward* as limited to the effects of the picketing on the foreign shipowners.[9] This Court refused to adopt this "bifurcated view of the effects of a single group of pickets at a single site" (419 U.S. at 222). The Court explained (*id.* at 224):

> While we * * * spoke in *Windward* of the effect of the Houston pickets on the maritime operations of foreign ships, the quoted passage [415 U.S. at 114] shows that we fully recognized that this effect would not be produced solely by the pickets and the messages carried by their signs. It would be produced in large part by the refusal of American workmen employed by domestic stevedoring companies to cross the picket line in order to load and unload cargo coming to or from the foreign ships. Since *Windward* held that the Houston picketing was not "in" or "affecting commerce," it would be wholly inconsistent to now hold, insofar as concerns Board jurisdiction over a complaint by respondents, that the employer of the longshoremen who honored the picket lines, or the shipper whose goods they did not handle, was "in" or "affecting commerce."

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[9] In *Windward*, the suit had been brought by the foreign shipowners. The unions in *Mobile* argued that *Windward* held only that the maritime operations of foreign ships were not "in commerce," and that insofar as picketing was directed at those ships it was beyond the Board's jurisdiction. They further argued that insofar as the picketing had effects on American neutral employers, who were themselves clearly "in commerce" and subject to the Board's jurisdiction, the picketing was arguably a secondary boycott prohibited by the NLRA and thus beyond the jurisdiction of the state courts (419 U.S. at 220).

The Court added (419 U.S. at 225; footnote omitted):

> The effect of the picketing on the operations of the stevedores and shippers, and thence on these maritime operations, is precisely the same whether it be complained of by the foreign-ship owners or by persons seeking to service and deal with the ships. The fact that the jurisdiction of the state courts in this case is invoked by stevedores and shippers does not convert into "commerce" activities which plainly were not such in *Windward*.

Petitioners interpret (Br. 8-23) the foregoing decisions, particularly *Mobile*, as establishing the principle that the Board is deprived of jurisdiction over all secondary boycotts in support of a primary dispute with a foreign entity which is beyond the Board's jurisdiction. See also *Baldovin* v. *International Longshoremen's Association*, 626 F.2d 445 (5th Cir. 1980). Since the Board does not have jurisdiction over the ILA's dispute with the USSR, it lacks power, they argue, to reach secondary activity directed at neutral American employers in furtherance of that dispute. The Board and the court below correctly concluded that this argument misreads the Court's prior decisions.

As the Board explained (S.M. 20a), "the Court analyzed the secondary effect of the *Mobile* picketing solely on the basis of its identity with the primary conduct held to be beyond the Board's jurisdiction in *Windward*." Thus, *Windward* and *Mobile* "holds only that, where primary activity interferes with foreign maritime relations and inextricably involves the secondary employers, the Board is prohibited from asserting jurisdiction over the primary conduct or its secondary effects" (S.M. 23a).[10] The Court did *not* hold that purely secondary activity which is directed immediately against domestic employers who are "in commerce" is beyond the Board's

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[10] Similarly, the court below read *Mobile* as establishing that in the case of interrelated labor disputes, particularly disputes that give rise to similar conduct carried out at a single site, a 'primary dispute' cannot be extricated from a 'secondary dispute' for purposes of contrary jurisdictional findings" (Pet. App. 13a).

jurisdiction simply because that conduct is undertaken in support of a primary dispute that is not "in commerce." Thus, the Court stated in *Mobile*, 419 U.S. at 225 n.10, that its decision therein "need cast no doubt on those cases which hold that the Board has jurisdiction under § 8(b)(4) of domestic secondary activities which are in commerce, even though the primary employer is located outside the United States. See *Madden* v. *Grain Elevator Workers Local 418*, 334 F.2d 1014 (CA7 1964), cert. denied, 379 U.S. 967 (1965); *Grain Elevator Workers Local 418* v. *NLRB*, 126 U.S. App. D.C. 219, 376 F.2d 774, cert. denied, 389 U.S. 932 (1967)."

Madden and *Grain Elevator Workers* both involved the same dispute. A Canadian union was engaged in a labor dispute with a Canadian shipper-employer. In support of that Canadian union, an American union that represented employees of the American secondary employer induced its members to cease loading the American employer's grain onto the Canadian ships. Both courts rejected the contention that the Board lacked jurisdiction over the secondary boycott. As the court said in *Madden*:

> No attempt is being made to regulate or to apply the Act to the "internal management or affairs" of [the Canadian employer]. * * * No conflict between American and Canadian policies can result from halting an illegal secondary boycott in this country, directed against an American employer by an American labor organization and involving employees working in a domestic plant of the American employer.

334 F.2d at 1019. Accord: *Grain Elevator Workers Local 418* v. *NLRB*, *supra*, 376 F.2d at 776.[11]

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[11] Petitioners' argument (Br. 22) that *Madden* and *Grain Elevator Workers* are distinguishable because there, "the Canadian union's * * * American activity was independent of the Canadian activity [so that] [i]t was capable of bifurcation and resolution without intrusion into the foreign dispute" ignores the fact that it was the American union's boycott of its domestic employer which was held to be within NLRA jurisdiction in those cases. Like the ILA's boycott here, the domestic, secondary boycott there was the

The court below also correctly concluded that "application of section 8(b)(4) here would portend no interference in the management or affairs of foreign companies, workers, or labor organizations" (Pet. App. 12a). It added (*id.* at 13a):

> [T]here is no attempt to "bifurcate" the effects of a single union action. The *only* labor-related activity in issue has been played out by an all-American cast. The fact that this domestic labor dispute was inspired by military events in foreign lands—events far beyond NLRB jurisdiction—does not counsel against application of the NLRA to the labor dispute ongoing here at home. * * *

Petitioners contend (Br. 13) that there was "no dispute between the union and the American entities that was independent of the [union's] dispute with the Soviets," and hence there was "no domestic activity which could be bifurcated from the foreign activity." Here, "as in *Mobile*, there was but a single union activity which had simultaneous domestic and foreign effects"; any "splitting off and resolution of the domestic effects, under the pretext of finding an independent American controversy, would necessarily resolve the dispute and end the activity which under the *Windward* analysis is conceded to be foreign" (Br. 23; see also *id.* at 17). This contention misconceives the basis for the *Windward* and *Mobile* decisions.

In *Windward* and *Mobile* the key factor was that the union's activity was beyond the Board's jurisdiction, and that fact precluded the Board from asserting jurisdiction over its secondary effects. The decisions do not turn on the union's having exerted economic pressure on foreign shipowners and American employers, in furtherance of the same foreign dispute. The union activity in *Windward* and *Mobile* consisted of primary picketing directed

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only conduct engaged in by the American union. Moreover, since the domestic union's boycott was undertaken in sympathy with the Canadian union's dispute with its Canadian employer, that boycott, like the one here, was exclusively in support of a foreign dispute.

at the employment conditions of foreign seamen on foreign ships, conduct outside the Board's jurisdiction. Although the same picketing affected domestic employers, this effect was merely an incident of the ship picketing which was beyond the Board's reach. Here, on the other hand, the union engaged exclusively in purely secondary activity against employers subject to the Board's jurisdiction. Since this is the only activity involved, there is no need, as there was in *Windward/Mobile*, to separate the domestic secondary effects from activity over which the Board lacked jurisdiction.[12] The Board can thus assert jurisdiction without interfering in foreign maritime operations, principles of comity, or international trade.[13]

Finally, the extension of NLRA jurisdiction over petitioners' activity effectuates the "fundamental congressional intent to formulate a uniform national labor policy not subject to varying and inconsistent state-by-state adjudications" (S.M. 8a). As the Board explained (*ibid.*; footnote omitted):

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[12] Since it is the nature and thrust of the union's activity, and not the character of the union's primary dispute, which determines whether the Board has jurisdiction over the activity, there is no valid basis for petitioners' assumption that, "if the ILA's dispute with the Soviets had been a 'labor' dispute, [rather than a political dispute,] bifurcation would not have been possible and the union activity would not have been subject to the LMRA" (Br. 18).

[13] *National Maritime Union (Shippers Stevedoring Co.)*, 245 N.L.R.B. 149 (1979), is consistent with this analysis. There, a union representing American seamen picketed a USSR flag ship with signs protesting the use of USSR vessels, instead of American ships with American crews, to transport foreign cargo purchased with US tax dollars. As the Board explained (S.M. 22a n.29), since "the picketing activity was directed immediately against the foreign flag ship with the intent of compelling the total replacement of the foreign ship and its foreign crew with an American ship and its American crew," it "*directly* intruded into the maritime operations of a foreign ship." Thus, under the *Windward/Mobile* limitation, the picketing was beyond the reach of the Act. Here, by contrast, the "alleged conduct is purely secondary and there is no risk that assertion of Board jurisdiction will directly intrude into the maritime operations of a foreign ship" (S.M. 23a).

The ILA's actions triggered a national boycott potentially affecting every port in the United States. The ILA can affect the USSR's stance on Afghanistan, if at all, only through an effective nationwide boycott of Russian cargo. A failure to assert jurisdiction would force charging parties into the various state courts, all of which have different injunctive statutes with different standards. Resort to the state courts may well lead to contradictory results, with the ILA being enjoined in some ports and not in others.

II. THE ILA BOYCOTT ACTIVITY WAS WITHIN THE SCOPE OF SECTION 8(b)(4)(B) OF THE NLRA, AND PROSCRIBED BY ITS TERMS

Section 8(b)(4) of the NLRA provides, in pertinent part, that it shall be an unfair labor practice for a union or its agents:

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in any industry affecting commerce to engage in, * * * a refusal in the course of his employment to use, * * * or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
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> * * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * * *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

These provisions implement the "dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their

own." *NLRB* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 692 (1951). See also *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, 620-627 (1967); *NLRB* v. *Local 825, International Union of Operating Engineers*, 400 U.S. 297, 302-303 (1971).

In determining whether the Union is engaged in lawful primary, or unlawful secondary, activity, the "touchstone" is whether the union's concern is with the labor relations between the employer against whom its pressures are directed and that employer's own employees (protected "primary" activity), or whether the activity is "tactically calculated to satisfy union objectives elsewhere" (prohibited "secondary" activity). *National Woodwork, supra*, 386 U.S. at 644-645; *NLRB* v. *Enterprise Association & General Pipefitters, Local Union No. 638*, 429 U.S. 507, 511 (1977); *NLRB* v. *International Longshoremen's Association*, 447 U.S. 490, 503-504 (1980). Under this test, the ILA boycott activity is clearly secondary. As the Board observed (S.M. 14a; footnote omitted): "[T]he union's sole dispute is with the USSR over its invasion of Afghanistan. Allied, Waterman, and Clark have nothing to do with this dispute. Yet the Union's actions in furtherance of its disagreement with Soviet foreign policy have brought direct economic pressure on all three parties and have resulted in a substantial cessation of business."

A. The Unlawful Object Required For A Violation Of Section 8(b)(4)(B) Was Established

Petitioners contend (Br. 24-28) that both the Board and the court of appeals erred in finding that an object of ILA's refusal to handle Russian goods was to force one person to cease doing business with another person merely on the basis of the necessary effects of such refusal, when that refusal equally could be ascribed to a lawful object, *i.e.*, "a simple desire not to be involved in traffic with the Soviets" (Br. 25 n.29). There is no merit to this contention.

Petitioners suggest that direct evidence of their unlawful purpose to disrupt the business dealings between

neutral persons is required to establish a violation of Section 8(b)(4)(B) (Br. 24-26). That suggestion misinterprets the prohibition of Section 8(b)(4). That statute prohibits certain actions when "an object" of the action is to require a person to cease doing business with another. But the statute does not require a specific intent to accomplish the improper result. Here, as in *New York Mailers' Union No. 6*, 136 N.L.R.B. 196, 197-198 (1962), enforced as modified, 316 F.2d 371 (D.C. Cir. 1963) (quoting *Local 761, International Union of Electrical, Radio & Machine Workers* v. *NLRB*, 366 U.S. 667, 674 (1961); footnote omitted):

> [Petitioners] regard intent as synonymous with the *scienter* or *mens rea* of criminal violations. This is not, however, the type of intent which the Act requires to be proved. Rather, "in the absence of admissions by the Union of an illegal intent, the nature of the acts performed shows the intent.

Accord: *NLRB* v. *Retail Store Employees Union, Local 1001 (Safeco Title Insurance Co.)*, 447 U.S. 607, 614 (1980); *NLRB* v. *Building Service Employees International Union, Local No. 105*, 367 F.2d 227, 230 (10th Cir. 1966).[14]

Indeed, this Court's recent decision in *Retail Store Employees Union, supra*, makes it clear that, "at least when, as here, the union's conduct can under no reading of the facts be characterized as 'primary activity' protected by the Act" (Pet. App. 16a), the presence of an unlawful object may be inferred from the foreseeable and inevitable result of a union's conduct. In *Retail Store Employees Union*, a union engaged in an economic strike against an insurance company picketed and handbilled at the premises of title companies whose income was principally derived from the sale of the struck company's insurance. The picket signs and handbills clearly indi-

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[14] It is, of course, not necessary that the cessation of business be the *sole* object in order to be an object prohibited by Section 8(b)(4)(B). It is sufficient if it is *an* object. See *NLRB* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 689-690 (1951).

cated that the union's dispute was exclusively with the insurance company, and that the union's appeal was to the public to cancel insurance with the struck employer. There was no independent evidence that an object of the union's conduct was to place secondary economic pressure on the title companies. However, because the title companies dealt almost exclusively in the struck employer's insurance, the Court agreed with the Board that the union's conduct was " 'reasonably calculated to induce customers not to patronize the neutral parties at all.' " 447 U.S. at 614. Holding the union "responsible for the 'foreseeable consequences' of its conduct," (*ibid.* n.9) the Court affirmed the Board's finding of a secondary boycott violation.

The Board, like the court of appeals (Pet. App. 18a), concluded that the rationale of *Retail Store Employees Union* "applies with full force to this case" (S.M. 32a). As the Board explained (S.M. 32a-34a):

> Approximately 85 percent of Allied's imported products, amounting to $25 million annually, come from the USSR. The boycott of Russian cargo inevitably would be expected to threaten Allied with substantial economic loss.
>
> It was equally foreseeable that no longshoremen could be employed by the neutral parties in the face of the ILA boycott. Clark regularly depends on the hiring halls operated by the ILA Locals to furnish the longshoremen who constitute its regular work force. * * *
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> While the collective-bargaining agreements may have permitted the use of non-ILA employees, * * * ILA Vice President Hankard testified that * * * when the ILA goes on strike against a ship, scalawags do not substitute for striking ILA longshoremen. * * * "The Ship wouldn't be working."
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> In these circumstances, the inevitable consequences of the ILA boycott, which [petitioners] had every reason to foresee with absolute clarity, were that Russian goods would not be moved by any employees in any of the ports encompassed by the boycott, that Waterman would cease carrying Russian cargo to the boycotted ports, and that Allied would be forced to

cease purchasing Russian wood for delivery to ports affected by the boycott. Under the rationale of [*Retail Store Employees Union*], [petitioners] must be held accountable for the foreseeable consequences of their conduct, and, regardless of their stated intent, must be held to have induced the boycott with an object of forcing the business entities involved to cease business operations among themselves and to cease handling goods of the USSR.[15]

B. The ILA's Boycott Is Subject To Regulation Under Section 8(b)(4)(B) Even Though It Was Not In Furtherance Of a Labor Dispute With Any Primary Employer and Sought a Political Rather Than An Economic Objective

The Board and the court of appeals also properly rejected petitioners' argument (Br. 28-31) that their boycott was not regulated by Section 8(b)(4)(B) because it was not in support of a labor dispute with any primary employer and sought a political rather than an economic objective. Section 8(b)(4)(B) prohibits certain specified conduct if engaged in with certain specified objectives. The language of the provision does not condition the invocation of its protections upon the existence of a primary labor dispute.

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[15] Petitioners' assertion (Br. 27) that their "refusal to handle [Allied's USSR cargo] inevitably affected [only] Clark," and that Waterman "could have continued" to transport Allied's cargoes to Canadian ports where petitioners' boycott was not in effect, does not undermine the analysis set forth above. Initially, it is sufficient to establish a violation of Section 8(b)(4)(B) that, as petitioners acknowledge, the boycott "inevitably affected Clark" in its ability to do business with Waterman. With respect to Allied and Waterman, it is settled that Section 8(b)(4)(B) does not require a total cessation of business; it is enough that the union's conduct requires either a change in an employer's policies or causes a significant diminution in trade. *NLRB* v. *Local 825, International Union of Operating Engineers*, 400 U.S. 297, 304-305 (1971). See also *NLRB* v. *Carpenters District Council of New Orleans & Vicinity*, 407 F.2d 804, 806 (5th Cir. 1969); *Bedding, Curtain & Drapery Workers Union, Local 140*, 164 N.L.R.B. 271, 272 (1967), enforced, 390 F.2d 495, 499-501 (2d Cir.), cert. denied, 392 U.S. 905 (1968).

Moreover, as the Board observed (S.M. 13a), "[i]t is plain from the legislative history that the secondary boycott provisions [of the Act] are to be construed broadly." Thus, during congressional consideration of the 1947 amendments to the Act, the evil of secondary boycotts was recognized as being that

> they do not arise out of any dispute between an employer and employees who engage in the activities, or, in most cases, between the employer and any of his employees. More often than not the employers are powerless to comply with demands giving rise to the activities, and many times they and their employees as well are the helpless victims of quarrels that do not concern them at all. * * *

H.R. Rep. No. 245, 80th Cong., 1st Sess. 23 (1947), I NLRB, *Legislative History of the Labor Management Relations Act, 1947*, at 314 (1948) (hereinafter cited as *"Leg. Hist. LMRA"*). As Senator Taft explained during a debate with Senator Pepper, the objective of Section 8(b)(4)(A) (now Section 8(b)(4)(B)) was to "make[] it unlawful [for a union] to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement" 93 Cong. Rec. 4198 (1947), II *Leg. Hist. LMRA* 1106. When Senator Pepper objected that the language of the section was too broad, applying "not only to the so-called typical secondary boycott, but to any kind of a boycott," Senator Taft responded (*ibid.*):

> It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice.

Accordingly, in *National Woodwork, supra*, this Court held that if a "boycott [is] tactically calculated to satisfy union objectives elsewhere" it is secondary, and "[t]here need not be an actual dispute with the [primary] em-

ployer * * * for the activity to fall within this category," 386 U.S. at 644-645. This principle has been applied by the courts in a variety of situations where, as here, the union has no primary labor dispute with any employer. For example, in *NLRB* v. *Washington-Oregon Shingle Weavers' District Council*, 211 F.2d 149 (9th Cir. 1954), a union ordered employees of an employer not to process shingles into shakes because it had been attempting to organize the Canadian mills that manufacture such shingles. The union admittedly had no dispute with the specific mill that was manufacturing the shingles. The court stated (*id.* at 152; emphasis added):

> The Union's argument that there was no evidence of a dispute between it and the Canadian plants is without merit. If that were true, it would not make the Union's conduct any more excusable. The prohibited object of the boycott is stated by the statute to be "forcing * * * any employer or other person to cease using * * * the products of any other producer, processor, or manufacturer * * *." That is a prohibited object whether the union has or has not a dispute with such "other producer, processor, or manufacturer." *In fact, if the object is sought, not because of any dispute, but merely because the union dislikes the other producer for any reason, or for no reason, the conduct would appear even more reprehensible.*[16]

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[16] Accord: *National Maritime Union* v. *NLRB*, 342 F.2d 538, 541-542 (2d Cir.), cert. denied, 382 U.S. 835 (1965); *National Maritime Union* v. *NLRB*, 346 F.2d 411, 416-420 (D.C. Cir.), cert. denied, 382 U.S. 840 (1965); *NLRB* v. *Twin City Carpenters District Council*, 422 F.2d 309, 312-313 (8th Cir. 1970). As the District of Columbia Circuit recently reaffirmed, "the Board [is] under no obligation to pause at the threshold to identify a conventional labor dispute. * * * [It need only] measure the union's conduct against specific provisions of the Act defining unfair labor practices." *Soft Drink Workers Union, Local 812* v. *NLRB*, 105 L.R.R.M. 2658, 2662 (1980).

Of the five courts of appeals that have considered the issue, only the Fourth Circuit has found a primary labor dispute necessary to the finding of a violation of Section 8(b)(4)(B) of the Act. *NLRB* v. *International Longshoremen's Association & Local*

In this case, Section 8(b)(4)(B)'s purpose of protecting commerce by "shielding unoffending employers and others from pressures in controversies not their own" (*Denver Building & Construction Trades Council, supra*, 341 U.S. at 692) would be furthered by finding the ILA boycott within the scope of that provision. As the court of appeals explained (Pet. App. 19a):

> The ILA concedes it has no dispute with Clark, Waterman or Allied, and there is no suggestion that it seeks to affect the labor relations of any of these employers. It is also plain that these "unoffending employers" have been embroiled in a "controversy not their own" as a result of union action which "reasonably could be expected" to "threaten a neutral party with ruin or substantial loss." * * *

Conversely, the court observed that the countervailing interest in protecting the "right of labor organizations to bring pressure to bear on offending employers in primary labor disputes" (*Denver Building & Construction Trades Council, supra*, 341 U.S. at 692) would not be furthered by finding the boycott beyond the scope of Section 8(b)(4), because "it [is] plain that the ILA was not engaged in primary activity and that the boycott against Allied's goods was 'calculated to satisfy union objectives elsewhere'" (Pet. App. 19a).

Finally, the court correctly concluded (Pet. App. 21a) that nothing in the "language of section 8(b)(4) and the congressional objectives that prompted its enactment point to [any] reason why the section should not prohibit * * * secondary pressure, for whatever reasons motivated," including that "motivated by a 'purely political dispute.'" Indeed, the court noted, "[w]e think it more rather than less objectionable that a national labor union has chosen to marshal against neutral parties the considerable powers derived by its locals and itself under

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1855, ILA (Ocean Shipping Service), 332 F.2d 992 (4th Cir. 1964). For the reasons set forth above, we submit that the view of the Fourth Circuit is erroneous.

the federal labor laws in aid of a random political objective far removed from what has traditionally been thought to be the realm of legitimate union activity" (*ibid.*).[17] See, *e.g.*, *Eastex, Inc.* v. *NLRB*, 437 U.S. 556, 563-570 (1978). Indeed, by seeking to govern the conduct of third persons to accomplish a political objective (to force them to cease doing business with the USSR), petitioners undertook to exert extra-governmental regulatory power of a sort that only properly authorized governmental institutions may exercise. Cf. *Fashion Originators' Guild* v. *FTC*, 312 U.S. 457, 465 (1941).

Nor does the conclusion that Section 8(b)(4)(B) prohibits union secondary boycott activity in furtherance of a political objective infringe on the right of expression of the union and its members (cf. *NLRB* v. *International Longshoremen's Association*, *supra*, 322 F.2d at 997). As the court below pointed out (Pet. App. 22a-23a; footnote omitted), "the union and its members have numerous alternative forms of 'expression' left to them, including the right to assemble or leaflet in protest of Russian aggression and the right to petition and lobby elected representatives in pursuit of a reassessment of United States foreign policy regarding American-Russian trade".[18]

In sum, while the ILA's boycott of Russian goods may be, as petitioners contend (Br. 26, 34, 37-42), political

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[17] Although the ILA's boycott of Russian goods is in furtherance of a political objective rather than a primary labor dispute, petitioners err in suggesting that their action has "nothing to do with labor relations" (Br. 29). The ILA implemented its boycott by causing employees of a neutral employer, Clark, who were ILA members, to cease handling and unloading goods owned by Allied and transported by Waterman. At the very least, this strike disrupted labor-management relations between Clark and its employees, and, when it forced Allied, Waterman, and Clark to cease doing business with each other, it resulted in the very disruption to interstate commerce that the NLRA was intended to avoid. There was a labor dispute, albeit a purely secondary one.

[18] The Board added that the union and its members could have "picketed the Russian embassy and Russian consular offices in various cities throughout the United States" (S.M. 34a n.45).

and "conscientious," Section 8(b)(4) of the NLRA prohibits the means petitioners chose to express their disapproval of aggression by a foreign government. It is settled that "the legality of the ultimate goal 'does not insulate the union's actions where * * * such ultimate object is sought by prohibited means. A finding of an illegal intermediate object is all that is required.'" *National Maritime Union* v. *NLRB*, *supra*, 346 F.2d at 419-420. Accord, *Soft Drink Workers Union, Local 812* v. *NLRB*, *supra*, 105 L.R.R.M. at 2665; *NLRB* v. *United Association of Plumbers, Local No. 12*, 320 F.2d 250, 254 (1st Cir. 1963).[19]

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[19] The government's position that petitioners' action amounted to a secondary boycott violative of Section 8(b)(4)(B) of the NLRA is consistent with its position in *Jacksonville Bulk Terminals* v. *International Longshoremen's Association*, No. 80-1045. There, the government contends that the question whether the refusal of the ILA members to handle Russian goods violated the no strike clause of the collective bargaining agreement with their employer presents a "labor dispute" within the meaning of Section 4 of the Norris-LaGuardia Act, 29 U.S.C. 104. Nonetheless, federal jurisdiction to enjoin the strike exists under *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), and *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), because disputes over work assignments are subject to the mandatory grievance and arbitration clause of the collective bargaining agreement. The Norris-LaGuardia Act defines a "labor dispute" in terms identical to those in Section 2(9) of the NLRA, 29 U.S.C. 152(9). It encompasses not only traditional primary disputes, but also those with secondary objectives. (See Brief for the United States as Amicus Curiae, No. 80-1045, at 11-19; see also *Soft Drink Workers Union, Local 812, supra*, 105 L.R.R.M. at 2662-2663). That activity in support of such secondary objectives violates Section 8(b)(4) of the NLRA, and that it occurs in the absence of a primary labor dispute, does not affect the determination that it involves a labor dispute. In other words, a labor dispute in which the union pursues an unlawful objective or employs unlawful means is nonetheless a "labor dispute" within the meaning of Norris-LaGuardia and the NLRA.

The government states in *Jacksonville Bulk Terminals* that the question whether the ILA had a contractual right to object to handling politically offensive cargo was an arbitrable issue under the collective agreement there involved (Amicus Br. 22-23); it also states that a union conceivably could negotiate a contractual right

III. THE ILA ACTIVITY WAS NOT PRIVILEGED BY THE FIRST AMENDMENT

Petitioners contend (Br. 37-43) that their refusal to handle Russian goods was privileged by the First Amendment because it was merely an expression of the conscience of the individual union members, who were demonstrating disapproval of Soviet aggression. The Board (S.M. 30a n.38) and the court of appeals (Pet. App. 22a-24a) properly rejected this contention.

The facts establish conclusively that Gleason's January 9 public statement ordering an immediate suspension in handling Russian ships and cargo (*supra*, pages 2-3) was not merely a response to overwhelming demands by the union members, but rather "a binding order from the president of the ILA to the rank-and-file membership" (S.M. 29a).[20] "The orchestration of the boycott by the International's leadership" is further evident in the conversations between Allied officials and representatives of the Local Unions on March 12 and 25 (*supra*, page 4), "which indicated that any change in the boycott of Russian cargo would originate with ILA President Gleason" (S.M. 29a). This "uncontroverted evidence demon-

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to refuse work assignments on conscientious grounds (Amicus Br. 26 n.17). It does not follow, as petitioners assume (Br. 31), that an arbitrator could properly hold that any such contract provision privileges the union to engage in a secondary boycott violative of the NLRA. Cf. *NLRB* v. *Iron Workers*, 434 U.S. 335, 351 (1978) ("That a court has jurisdiction to consider a suit on a particular contract does not suggest that the contract is enforceable"); *NLRB* v. *Enterprise Association & General Pipefitters, Local Union No. 638*, *supra*, 429 U.S. at 519 ("[A] valid contract does not immunize conduct otherwise violative of § 8(b)(4)").

[20] The Board noted that, shortly before the public release of Gleason's statement, some ILA longshoremen employed by Clark wanted to stop unloading the WALTON because of the presence of Russian cargo, but were directed by ILA Vice-President Hankard "to continue working until he found out from ILA headquarters in New York 'what was happening'"; none of the "ILA rank and file in Boston actually stopped handling Russian cargo until ordered to do so by Gleason" (S.M. 29a).

strates that the decision to boycott Russian cargo was made by ILA leadership and was maintained in effect as a matter of ILA policy determined at the headquarters level" (S.M. 30a).[21]

Where, as here, a union sponsors and publicly announces its refusal to handle "hot cargo" and then effectuates that secondary boycott by actively refusing to permit its members to perform that work for their employers, it does more than merely disseminate information or express the union's or its members' political, social or religious views. Rather, by exercising the full economic power of an organized group of workers held together by union discipline, the union, itself, engages in a refusal to perform work or handle goods, induces its members to withhold their services from their employer, and coerces and restrains the employer who relies on the union for its labor supply. The regulation of such inherently coercive conduct raises no First Amendment problem. See *Denver Building & Construction Trades Council, supra*, 341 U.S. at 690-691; *Local 74, United Brotherhood of Carpenters* v. *NLRB*, 341 U.S. 707, 713 (1951); *Giboney* v. *Empire Storage Co.*, 336 U.S. 490 (1949). See also *United States* v. *O'Brien*, 391 U.S. 367 (1968). Indeed, as the court of appeals observed, "the sort of union-directed work stoppage at issue here is much farther removed from 'pure' expression than the peaceful picketing that has been found to violate section 8(b)(4) in numerous cases" (Pet. App. 23a; footnote omitted; see also *id.* at 36a-37a (concurring and dissenting opinion)). See, *e.g.*, *Retail Store Employees Union*,

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[21] Since the material facts set forth in the affidavits submitted to the district court (J.A. 24a-64a) were not disputed and were sufficient to establish that petitioners had engaged in activity violative of Section 8(b)(4) of the NLRA, there is no merit to petitioners' contention (Br. 43-45) that the court of appeals should not have summarily reversed the district court, but instead should have remanded the case for an evidentiary hearing. Moreover, petitioners were afforded a full evidentiary hearing before the Board and adduced essentially the same evidence that they presented to the district court.

Local 1001, supra, 447 U.S. at 616; *International Brotherhood of Electrical Workers* v. *NLRB*, 341 U.S. 694, 705 (1951).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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